



November 16, 1999

Mr. David Anderson
General Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR99-3283

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129451.

The Texas Education Agency (the "TEA") received a request for eight categories of information related to charter schools managed by Texans Can! You seek to withhold specific responsive items, claiming that this information is excepted from disclosure under sections 552.101, 552.103, and 552.131 of the Government Code. We assume that the balance of the responsive information has been released to this requestor. We have considered the exceptions you claim and reviewed the submitted information.

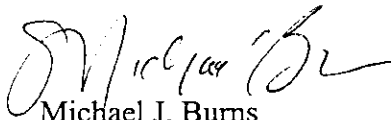
You assert that the informer's privilege aspect of section 552.101 of the Government Code as well as section 552.131 of the Government Code excepts from disclosure the identities of individuals who have supplied information to TEA. The requestor has informed this office that, "Texans Can! does not care whether it receives the names of informants. It only seeks the *substance* of their *allegations*." As the requestor has withdrawn its request for this information, you may withhold informer identifying information as non-responsive to this request. We have marked the types of information which would tend to identify informers and is no longer responsive to this request.

You also assert that the subject information is excepted by section 552.103(a). Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to show that (1) litigation is pending or reasonably anticipated, and (2)

the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Further, to be excepted under section 552.103, the information must relate to litigation that is pending or reasonably anticipated on the date that the information was requested. Gov't Code § 552.103(c). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture; the mere chance of litigation will not establish the litigation exception. Open Records Decision No. 452 at 4 (1986) Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* This office has concluded that litigation was reasonably anticipated when the following facts have been alleged or shown: the potential adversary filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); the potential adversary hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); the governmental body received a claim letter that it represents to this office to be in compliance with notice requirements of Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, or applicable municipal ordinance, *see* Open Records Decision Nos. 288 (1981), 638 (1996). Where a governmental body is a potential plaintiff, it must show that it has regulatory authority in the area under investigation and explain the violations that it intends to litigate. The mere contemplation of bringing suit is not sufficient to invoke the litigation exception. Open Records Decision No. 557 (1990). In this case, you have alleged no facts which indicate that any concrete steps have been taken toward litigation. We conclude that you have not demonstrated that litigation is reasonably anticipated in his matter. Therefore, no information may be withheld under section 552.103(a) of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 129451

Encl. Submitted documents

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(w/o enclosures)